

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**UNITED STATES OF AMERICA,
ex rel. SIB PARTNERS LLC,**

Plaintiff/Relator,

v.

THYSSENKRUPP, *et al.*,

Defendants.

CASE NO. 2:17-cv-653

FILED UNDER SEAL

JUDGE GRAHAM

MAGISTRATE JUDGE JOLSON

**THE GOVERNMENT'S NOTICE OF ELECTION TO
DECLINE INTERVENTION**

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies the Court of its decision not to intervene in this action.

Pursuant to 31 U.S.C. § 3730(b)(1), the relator is authorized to maintain the action in the name of the United States providing, however, that the "action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting." *Id.* Therefore, the United States requests that, should either the relator or the defendant propose that this action be dismissed, settled, or otherwise discontinued, the written consent of the United States be required before this Court rules on the request or grants its approval.

Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings filed in this action be served on the United States and that orders issued by the Court be sent to the Government's counsel. The United States reserves its right to order any deposition transcripts, to intervene in this action for good cause at a later date, and to seek the dismissal of

the relator's action or claim. The United States also requests that it be served with all notices of appeal.

The Government requests that, as provided under 31 U.S.C. § 3730(b), the seal be lifted as to the relator's complaint, this Notice of Election to Decline Intervention and the Order entered by the Court pursuant to this Notice. Any pleadings filed and Orders entered after the filing of this Notice of Election to Decline Intervention should not be under seal and should be made available on the Court's Pacer system. The United States requests that the case itself be unsealed pursuant to the limitations above and made available on Pacer.

The United States requests that all other contents of the Court file, consisting primarily of the various requests for extensions of the intervention and seal deadlines, remain under seal. The *qui tam* provisions of the False Claims Act provide a procedure for the United States to report to the Court about the status of its investigation to demonstrate that good cause exists to extend the intervention deadline. These *in camera* submissions discussing the content and extent of the United States' non-public investigation, including methods and thought processes for assessing the relator's allegations, were provided under 31 U.S.C. § 3730(b)(3) to the Court alone for the sole purpose of evaluating whether the seal and time for making an election to intervene should be extended. *See id.* 3730(b)(2)-(3) (providing only for unsealing the *in camera* complaint). The United States has a significant interest in preserving the secrecy of its investigations into false claims made against the government. *American Civil Liberties Union v. Holder*, 652 F. Supp. 2d 654, 666 (E.D. Va. 2009). Such motions and supporting memoranda should therefore remain sealed.

A proposed order accompanies this notice.

Respectfully submitted,

KENNETH L. PARKER
United States Attorney
Southern District of Ohio

s/Andrew M. Malek

ANDREW M. MALEK (0061442)

Assistant United States Attorney
303 Marconi Boulevard, Suite 200
Columbus, Ohio 43215

Phone No.: (614) 469-5715

Fax No.: (614) 469-2769

Email: Andrew.Malek@usdoj.gov

Counsel for the United States of America

Dated: November 30, 2021

CERTIFICATE OF SERVICE

I certify that on November 30, 2021, the foregoing Notice of Election to Decline Intervention was presented to the United States District Court for filing using the Court's CM/ECF System. I certify that on the same date a copy of the foregoing was sent by electronic mail to counsel to Relator pursuant to counsel's consent to this manner of service:

Frederick M. Morgan, Jr.
Jennifer M. Verkamp
Ian M. Doig
Morgan Verkamp LLC
35 E. 7th St., Ste. 600
Cincinnati, OH 45202
rick.morgan@morganverkamp.com

s/Andrew M. Malek
ANDREW M. MALEK (0061442)
Assistant United States Attorney